

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

JAMES PIERCE,	:	
Petitioner,	:	Case No. 3:10cv00132
vs.	:	District Judge Thomas M. Rose
		Magistrate Judge Sharon L. Ovington
TIMOTHY BUCHANAN, Warden,	:	
Ross Correctional Institution,	:	
Respondent.	:	

ORDER

This case is presently before the Court upon Petitioner James Pierce's Motion to Vacate the Stay and Abeyance Order (Doc. #8), and the record as a whole.

On April 16, 2010, upon preliminary consideration pursuant to Rule 4 of the Rules Governing §2254 Cases, this Court found "that it does not plainly appear from the face of the Petition and any exhibits attached thereto that Petitioner is not entitled to relief in this Court." (Doc. #7). As such, the petition was deemed not to be subject to sua sponte dismissal under Rule 4. (*Id.*).

Due to Petitioner's Motion for Stay and Abeyance (Doc. #2), however, the Court did not direct Respondent to file an Answer or otherwise respond to the habeas petition until further Order of the Court. (Doc. #7). Petitioner's Motion for Stay and Abeyance

(Doc. #2) was granted in order to allow him the opportunity to exhaust in the state courts. (Doc. #7).

On March 23, 2012, Petitioner filed a Motion to Vacate the Stay and Abeyance Order, wherein Petitioner informed the Court that he exhausted his State remedies and requests “an Order to Vacate the Stay and Abeyance Ordered in this case allowing Habeas Corpus proceedings to go forward.” (Doc. #8)

As Petitioner has informed this Court that he has exhausted his claims in the Ohio courts, it is no longer necessary for this case to be stayed and held in abeyance. Accordingly, Petitioner’s Motion to Vacate the Stay and Abeyance Order (Doc. #8) is well-taken.

Accordingly, Respondent shall file an Answer conforming to the requirements of Rule 5 of the Rules Governing §2254 Cases. Specifically, said Answer shall respond to each allegation made in the Petition, raise any affirmative defense relied on by Respondent, and state whether, from Respondent’s perspective, Petitioner has exhausted his state remedies, including delayed appeal, Application to Reopen Appeal under Ohio R. App. P. 26, and Petition for Post-Conviction Relief pursuant to Ohio Revised Code §2953.21.

Respondent is reminded of the requirements in S. D. Ohio Civ. R. 7.2 that any motion paper over twenty pages must be accompanied by “a succinct, clear and accurate summary, not to exceed five pages, indicating the main sections of the memorandum, the principal arguments and citations to primary authority made in each section, as well as the

pages on which each section and any sub-sections may be found.”

Respondent’s Answer shall be accompanied by those portions of the state court record needed to adjudicate this case, appropriately indexed and tabbed. In lieu of these attachments, Respondent may request and the Court will issue a writ of certiorari to the relevant County’s Clerk of Courts to produce the complete record.

Nothing in this Order is intended to prevent Respondent from filing a Motion to Dismiss or other pleading before filing the complete record if disposition can be made on an incomplete record.

Petitioner may file and serve a Reply or Traverse to the Answer not later **than twenty-one days after the Answer is filed**. If Respondent files a Motion to Dismiss, Petitioner’s time to file a Memorandum in Opposition will likewise be **twenty-one days from service**, as provided in S. D. Ohio Civ. R. 7.2(a).

IT IS THEREFORE ORDERED THAT:

1. Petitioner’s Motion to Vacate the Stay and Abeyance Order (Doc. #8) is GRANTED and the stay is lifted;
2. On or before **May 23, 2012**, Respondent shall file an Answer in this case conforming to the requirements of Rule 5 of the Rules Governing §2254 Cases; and,

3. The Clerk of Court is directed to serve the Petition and a copy of this Order by electronic or regular mail on Respondent and the Attorney General of Ohio, c/o Assistant Attorney General M. Scott Criss, Corrections Litigation, 150 E. Gay Street, 16th Floor, Columbus, Ohio 43215-6001.

March 29, 2012

s/ Sharon L. Ovington
Sharon L. Ovington
United States Magistrate Judge